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IN THE

Supreme Court of the United States

RAYMOND E. PRYOR, etc.,

Petitioner,

v.

AMERICAN PRESIDENT LINES,

Respondent.

HENRY A. SACILOTTO,

Petitioner,

v.

NATIONAL SHIPPING CORPORATION, et al,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Your Petitioners, Raymond E. Pryor and Henry A. Sacilotto, pray that a Writ of Certiorari issue to review the Judgments of the United States Court of Appeals for the Fourth Circuit entered in the above entitled cases on August 6, 1975.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Fourth Circuit are to be published, but have not yet appeared in the appropriate advance sheets. The *Pryor* decisions and the *Sacilotto* decision may be found in the Appendix to this Petition.

JURISDICTION

Judgment in the *Pryor* case was originally entered on March 17, 1975, in favor of the Appellant, Raymond E. Pryor. Subsequently, the Appellee filed a Motion to Enlarge the Period of Time Within Which to File a Petition for Rehearing. This Motion was filed later than permitted by Rule, but notwithstanding this irregularity, the Court of Appeals permitted the Appellee to file a Petition for Rehearing. A Rehearing was had, and thereafter the Court entered a second Judgment on August 6, 1975. This Judgment withdrew the decision of March 17, 1975, and the case was decided in favor of the Appellee.

The *Sacilotto* case presented issues to the Court which were substantially identical to those raised by *Pryor*; and in reliance upon its decision in *Pryor,* the Court of Appeals on August 6, 1975 decided *Sacilotto* in favor of the Appellees therein.

An Application for Extension of Time Within Which to File this Petition was granted by Chief Justice Warren E. Burger on November 6, 1975. Pursuant thereto, this Petition for Writ of Certiorari was to be filed on or before November 11, 1975.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

I.

DID THE COURT OF APPEALS FOR THE FOURTH CIRCUIT ERR IN FAILING TO APPLY THE PRINCIPLES OF ADMIRALTY LAW TO THE FACTS IN THESE CASES?

A. WAS IT ERROR FOR THE COURT OF APPEALS TO HOLD THAT *THE EXTENSION OF ADMIRALTY JURISDICTION ACT* REQUIRES THAT A SHIP PROXIMATELY CAUSE AN INJURY ON LAND BEFORE ADMIRALTY JURISDICTION WILL BE INVOKED?

B. DID THE COURT OF APPEALS ERR IN ITS HOLDING REGARDING THE NATURE AND EXISTENCE OF CAUSATION IN THE PRYOR CASE?

C. WAS IT ERROR FOR THE COURT OF APPEALS TO HOLD THAT GOODS BEING LOADED ONTO A SHIP FROM A RAILROAD GONDOLA CAR ALONGSIDE THAT SHIP, ARE NOT CARGO WHICH WILL RENDER THE SHIP UNSEAWORTHY IF THEY ARE DEFECTIVELY PACKAGED OR IMPROPERLY STACKED?

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, Section 2, Clause 1, of the Constitution of the United States provides in pertinent part: "The judicial power shall extend . . . to all Cases of Admiralty and Maritime Jurisdiction. . . ."

UNITED STATES STATUTES INVOLVED

The Extension of Admiralty Jurisdiction Act, 46 U.S.C. § 740 (1970), provides as follows:

> "Section 740. Injury done or consummated on land. —The admiralty and maritime jurisdiction of the

United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act [§§ 781-790 of this title] or Suits in Admiralty Act [§§ 741-743, 744-752 of this title], as appropriate, shall constitute the exclusive remedy for all causes of action arising after the date of the passage of this Act [June 19, 1948] and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act [28 §§ 1346, 1504, 2110, 2671 et seq.]: Provided further, that no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. (June 19, 1948, [illegible]6, 62 Stat. 496.)"

28 U.S.C. § 1333 provides that:

The District Court shall have original jurisdiction, exclusive of the Courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

STATEMENT OF THE CASE

Raymond E. Pryor and Henry A. Sacilotto, your Petitioners, are herein seeking review of two separate deci-

sions of the United States Court of Appeals for the Fourth Circuit. The final decisions in their respective cases were entered on August 6, 1975; the *Sacilotto* case having been decided upon the precedent of *Pryor*. The legal issues presented to the Court were substantially the same, although different factual situations existed in each case.

The Pryor case involved a Complaint by the Estate of Marion Stephens, against a vessel owner for injuries sustained on September 12, 1969. Stephens, a longshoreman, was engaged in loading the SS PRESIDENT PIERCE; at the time he sustained his injuries, he and his work gang were attempting to load coils of steel wire from a railroad gondola car alongside the vessel into that vessel's hold. Just prior to the accident, the Plaintiff's Decedent was on top of the car after having hooked a coil of wire to the vessel's crane. As the draft was being raised, an end of an adjacent coil of wire, which was not banded and which had been intertwined with the coil being raised, broke loose and knocked the Deceased Plaintiff from the car to the ground, thereby injuring him.

The Plaintiff's suit was filed based on allegations of negligence on the part of the ship's winch operator; and a three-prong claim of unseaworthiness was also made, alleging: that the ship had failed to provide a safe place to work, that the ship had accepted defective cargo, and that there was an unsafe plan of operation for the loading process. The Court's Admiralty Jurisdiction was invoked under 28 U.S.C. § 1333(1); and its Diversity Jurisdiction was specifically admitted.

Upon trial of this cause, the District Court found that the Plaintiff had failed to offer proof sufficient to sustain any findings of either negligence or unseaworthiness on the part of the vessel. The Court specifically held that the

winch operator had not been negligent and that there was ". . . nothing unsafe with the plan of operation . . .". Accordingly, the Court granted the Defendant's Motion to Dismiss filed pursuant to Rule 41, Subsection b, Federal Rules of Civil Procedure.

An Appeal was thereafter taken by the Plaintiff, and after submission of Briefs and Arguments of Counsel, the Court of Appeals in its decision entered on March 17, 1975, speaking through Judge Craven, noted that there were no findings at the District Court level as to whether the Defendant had failed to provide a safe place to work. Likewise, there was no determination as to whether or not the coil adjacent to the one which had been lifted from the gondola car was defective in its packaging or storage. Thusly, the Appeals Court was unable to determine whether the defective condition of the adjacent coil, if any, amounted to a failure to provide a safe place to work or otherwise contributed to the unseaworthiness of the vessel. These findings were not made at trial because, in Judge Craven's words, the District Court ". . . concluded that the ship had not accepted the *cargo*—the coil remaining in the gondola car". (emphasis supplied, see Appendix p. 3)

Judge Craven concluded his opinion by disregarding the District Court's acceptance theory, and noted ". . . it is clear that it (the ship) had begun the process of unloading the car, and at the time of injury, the winch operator was actually lifting aboard other coils from the same car. We think that if the latent and allegedly defective conditions of the adjacent coil—dormant, but compressed —was activated in the process of loading with the winch, *a sufficiently close causal relationship* would exist between the operation of the shift's gear and the injury, and we so hold." (Citations omitted, emphasis supplied, see Appendix p. 3).

It is clear that the Court of Appeals felt that there existed a causal relationship sufficient to support a claim of negligence against the ship cognizable under Admiralty Law; and they reversed the District Court on this point. As to whether or not the ship was rendered unseaworthy as a result of the defective condition of the coil of wire, the case was remanded for a new trial.

Subsequent to the decision of March 17, 1975, the Appellee filed a Motion to Enlarge Time Within Which to File Petition for a Rehearing. The Court of Appeals granted this Motion, and a Petition for Rehearing was filed. Upon consideration of this Petition, the decision of March 17, 1975, was withdrawn and a new decision entered on August 6, 1975.

This second decision discussed the rationale behind the element of causation required to sustain a claim of negligence in the Maritime Law. It concluded that the "but-for" causation principle of negligence is inapplicable to the determination of Admiralty Jurisdiction under the Extention of Admiralty Jurisdiction Act, 46 U.S.C. § 740 1970); and that a proximate causation is required.[1]

In the second decision, the Court of Appeals more fully came to grips with the issue as to whether or not the subject coils of wire had become cargo so as to render the ship unseaworthy as a result of their defective packaging and storage. The Court took into consideration the mere fact that the coils of wire were in a gondola car

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[1] While the Court in its decision of August 6, 1975, made lengthy discussions in reference to the issue of proximate cause, there was never a holding as to whether such causation existed in the instant case. This is particularly curious since the March 17, 1975, decision specifically held that a "sufficiently close causal connection" existed under the alleged facts. Apparently, the Court withdrew a prior holding without giving any reasons for its action. Also, it seems clear that this issue of causation has been reopened and now remains unsettled.

located on the pier and were not at the time affixed to the ship; and then it held that the ". . . no fault doctrine of unseaworthiness with respect to packaging (of goods) becomes operable seaward of the plank, that is, when goods first come to rest on shipboard, and thereafter continues to operate shoreward in the off-loading process to a point not remote in time and place." (See Appendix, p. 16)

The decision of the United States District Court for the District of Maryland was affirmed.

Regarding the case of *Sacilotto,* the facts as found by the District Court were essentially undisputed. The Plaintiff, a longshoreman, was engaged in the loading process at the time of the occurrence there in question. He and his work gang were endeavoring to remove from an open top gondola car, which was sitting alongside the SS CHENAB, twenty foot long steel billets measuring four inches by four inches in width. The Plaintiff's job on that particular day was to take a 'breaking-out' wire and place it beneath eighteen billets at a time, which were then lifted up slightly allowing Plaintiff to put a wooden chock under the bunch. The lifting was performed by the ship's boom. Normally, after the chock is put in, the billets are lifted higher and the wire is moved further along to prevent slippage and a chock is placed under the other end of the batch by another longshoreman to allow chains to be placed around the group of billets for lifting onto the ship. When the billets were being lifted on this particular occasion, a loose billet, one not in the batch being lifted, which had been bowed by the weight of the billets above it, sprang up and hit the Plaintiff, injuring him.

The District Court dismissed the suit on its finding that it had neither Diversity nor Admiralty Jurisdiction; and an Appeal was taken on the question of Admiralty Juris-

diction. The Court of Appeals, in reliance upon its decision in *Pryor*, stated that *Pryor* controlled the decision in *Sacilotto* and held that since the steel billets had not yet become the ship's cargo, and that since neither the ship's gear nor its operation in any way could be considered the proximate cause of the injury, there was no Admiralty Jurisdiction. The District Court's decision was affirmed.

REASONS FOR GRANTING THE WRIT

I.

THE COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN FAILING TO APPLY THE PRINCIPLES OF ADMIRALTY LAW TO THE FACTS IN THESE CASES.

A. IT WAS ERROR FOR THE COURT OF APPEALS TO HOLD THAT THE EXTENSION OF ADMIRALTY JURISDICTION ACT REQUIRES THAT A SHIP PROXIMATELY CAUSE AN INJURY ON LAND BEFORE ADMIRALTY JURISDICTION WILL ATTACH.

The Court of Appeals in its second *Pryor* opinion, interpreted the Extension of Admiralty Jurisdiction Act to require a proximate causal connection between a ship and a land-based injury before the Admiralty Law would be applied. (See Appendix, p. 11.) It is your Petitioner's contention that review of this holding should be granted for the following reasons.

To begin, the question as to what causation is required before the Act will confer Admiralty Jurisdiction is one which is not entirely clear. As a result, the Court of Appeals has experienced great difficulty with the determination of the requirement of causation in this case. The extent of this difficulty is evidenced by the fact that in the March 17, 1975, opinion, it held that ". . . if the latent

and allegedly defective condition of the adjacent coil—dormant, but compressed—was activated in the process of loading with the winch, a *sufficiently close* causal connection would exist between the operation of the ship's gear and the injury, and we so hold." (emphasis supplied, see Appendix, p. 3) Here, the Court is saying that if there is a "sufficiently close causal connection" between the ship and a land based injury, then the Act will confer Admiralty Jurisdiction, and the injured party will have the benefit of the substantive Maritime Law. This application is clearly consistent with the maxim that requires the Maritime Law to be applied in such a way so as to promote its humanitarian purposes. See *Garrett v. Enso Gutzeit O/Y,* 419 F2d 228, 1974 A.M.C. 319 (4th Cir. 1974) where the Court stated:

> In view of the *obvious trend to develop the humanitarian purposes of the warranty of seaworthiness,* we find no reason to apply a hypertechnical definition to the terms loading and unloading. (emphasis supplied)

Nevertheless, upon reconsideration of this case, the Court reversed its prior decision, and held instead that the Act requires a strict proximate causation of an injury before the Maritime Law will apply. (See Appendix, p. 11)

It is important to note that this second interpretation of the Act, which is a complete reversal of the Court's prior holding, and which is in conflict with accepted rules of construction, was rendered upon a scant discussion of two cases which were decided by the Court of Appeals for the Fifth Circuit: *Kent v. Shell Oil Co.,* 286 F.2d 746 (5th Cir. 1961), and *Adams v. Harris County,* 452 F.2d 994 (5th Cir. 1972), *cert. denied,* 406 U.S. 968 (1972). (See appendix, p. ....)

In *Kent*, supra, a truck driver was injured when a pipe rolled off the bed of his truck onto him as he stood on the pier; and in *Adams*, supra, a motorcyclist was injured when he ran into a drawbridge which had been lowered by the bridge operator who thought that a pleasure craft had signaled to pass through. In these cases, the 5th Circuit held only that Admiralty Jurisdiction did not apply to the facts then at bar. It did not decide as a matter of law that there existed a requirement of proximate causation before the Act would extend Admiralty Jurisdiction.

Your Petitioners contend the Court of Appeals for the Fourth Circuit has applied on incorrect requirement of proximate causation; and that the issue of whether proximate causation is required before the Extension of Admiralty Jurisdiction Act will be applicable, is a question which has not, but should be decided by this Court.

B. THE COURT OF APPEALS ERRED IN FAILING TO DETERMINE THE NATURE AND EXISTENCE OF CAUSATION IN THE PRYOR CASE.

In the first *Pryor* decision the Court held that a "sufficient causal connection" must exist between the ship and the longshoreman's injuries, to come within the purview of the Act. Subsequently, in the second *Pryor* decision, the Court reversed itself and held that a strict proximate causation was required. Unfortunately, the Court never reconsidered the issue of whether the requisite causation existed in this case to satisfy the test of proximate causation. As a result, the second decision is inconsistent with the first and it has left unresolved the question of causation.

Your Petitioners contend that the specific issue of causation in this case should not be allowed to remain unresolved and should be considered by this Court.

C. IT WAS ERROR FOR THE COURT OF APPEALS TO HOLD THAT GOODS BEING LOADED ONTO A SHIP FROM A RAILROAD GONDOLA CAR ALONGSIDE THAT SHIP ARE NOT CARGO WHICH WILL RENDER THE SHIP UNSEAWORTHY IF THEY ARE DEFECTIVELY PACKAGED OR IMPROPERLY STACKED.

In speaking to the allegations that the injuries in each of these cases were caused by defective packaging or storage of goods being loaded onto a ship, the Court held that such defects would not render a ship unseaworthy until the goods became cargo. Recognizing the need for a test to determine when goods become cargo it then held that goods do not become cargo so as to render a ship unseaworthy as a result of defects in packaging or storage, until they "... first come to rest on ship board." (See Appendix p. 16) This holding was an incorrect attempt to apply a settled facet of Admiralty Law; and as a result, it is in direct conflict with the decisions of this Court and the other Circuits.

This Court's attention is drawn to *In Re Smith-Rice No. 4 and Smith-Rice No. 18,* 323 F.Supp. 44, 1972 A.M.C. 191, (1972), where the Court specifically held that a crane which was being dismantled preparatory to its being loaded upon a ship had not yet become cargo, nor could it become cargo *until it was ready to be and in the course of being loaded onto the barges and its component parts* (emphasis supplied).

The holding in *Smith-Rice,* supra, is clearly consistent with an observation made in *Victory Carriers, Inc., et al,* v. *Bill Law,* 404 U.S. 202, 1972 A.M.C. 1 (1971). There, Justice Douglas, in dissent, speaking in reference to the longshoreman, Bill Law, stated that he, Law, was driving

a forklift laden with *cargo* which was to be hoisted aboard the SS SAGAMORE HILL. (emphasis supplied) Clearly, Justice Douglas was taking judicial notice of an obvious fact, that is, that goods being loaded onto the ship are to be considered cargo so that the doctrine of unseaworthiness will operate to protect longshoremen involved in the loading process.

It is also important to note that this Court has recognized that goods in the process of being loaded onto a ship are to be considered cargo, and that a longshoreman injured in the process of loading due to defective cargo is entitled to the benefit of the doctrine of seaworthiness.

In *Gutierrez* v. *Waterman S.S. Corp.*, 373 U.S. 206, 1963 A.M.C. 1649 (1963), a longshoreman was granted the benefit of Maritime Law in his action to recover for injuries sustained when he slipped on coffee beans which had been spilled in the unloading process. There is ample language in that opinion from which it may be concluded that the seaworthiness warranty will also be applied to containers of cargo being loaded. Justice White, speaking for the majority, therein stated:

> Seaworthiness is not limited, of course, to fitness for travel on the high seas; it includes fitness for loading and unloading . . . when a ship-owner accepts cargo in a faulty container or allows the container to become faulty, he assumes responsibility for injury that this may cause to seamen or their substitutes on or about the ship. (373 U.S. at 213-14)

Justice Harlan dissenting in *Gutierrez,* states that under the majority opinion therein consistency demands that the warranty of seaworthiness be applied to cargo containers not only when the cargo is being unloaded but also when it is being loaded.

> "Presumably the result reached by the court would be the same—at least consisting demands that it should be the same—If this accident had occurred on the dock while the beans were being *loaded* rather than unloaded. (emphasis in original 273 U.S. at 220)

These principles have been similarly applied in the case of *Thompson* v. *Calmar S.S. Corp.*, 331 F.2d 657, 1964 A.M.C. 2249 (3rd Cir. 1964), cert. denied 379 U.S. 913, where it is stated: "The owner of a vessel being loaded has an absolute non-delegable duty of care toward a longshoreman not to create a risk to him." In the *Thompson,* case, supra, the Plaintiff was a stevedore working aboard a gondola car loading steel onto the ship. In order to properly position the gondola cars, the ship's winch was used to move the freight cars. As it did so, the car on which the Plaintiff was standing was struck and he was knocked to the ground. The Court rejected the Respondent's contention that there was no Admiralty Jurisdiction because the occurrence happened on the pier rather than aboard the ship, and quoted from *Morales* v. *City of Galveston,* 370 U.S. 165, 1962 A.M.C. 1450 (1962): "A vessel's unseaworthiness may arise from any number of individualized circumstances. Her gear might be defective, her appurtenances in disrepair, her crew unfit. The method of loading her cargo, or the manner of its storage might be improper." The Court further states: "The standard reasonable care required in discharging the cargo also applies with equal force to the loading of the cargo."

See also the case of *Garret* v. *Enso Gutzeit O/Y*, supra, in which bales of pulp paper were being stowed in the shed on the pier some twenty-five or more feet from the side of the ship. While attempting to jump a bale up to the fourth tier, the band broke, causing the bale to fall on the longshoreman. The Court held that the wire bands around the bales were the ship's cargo container. It

further stated: "Once cargo is accepted the shipowner becomes responsible for any injury caused by the defective condition of the cargo containers whether the injury occurs aboard the vessel or on the dock." The Court also concluded that "in view of the obvious trend to develop fully the humanitarian purposes of the warranty of seaworthiness, we find no reason to apply a hypertechnical definition to the terms loading and unloading." And in the case of *Reddick* v. *McAllister,* 258 F.2d 297, 1958 A.M.C. 1819 (2nd Cir. 1958), it was held that unseaworthiness may be predicated on the latent defect in the cargo crate.

It is clear that the plaintiffs in *Pryor* and *Sacilotto* were entitled to the protection of the Doctrine of Seaworthiness, and that their respective ships were unseaworthy as a result of the defective cargo. Accordingly, your Petitioners contend that the Court of Appeals for the Fourth Circuit has rendered a decision in conflict with the decisions of another Court of Appeals on the same matter and has decided a federal question in conflict with applicable decisions of this Court.

CONCLUSION

For the aforegoing reasons, it is prayed that this Honorable Court grant its Writ of Certiorari.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 74-1699

Raymond E. Pryor,
Personal Representative of the Estate of
Marion L. Stephens, Deceased,

Appellant,

versus

American President Lines,

Appellee.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.

Herbert F. Murray, District Judge.

Argued February 5, 1975

Decided March 17, 1975

Before HAYNSWORTH, Chief Judge, and
CRAVEN and WIDENER, Circuit Judges.

Joseph F. Lentz, Jr., for Appellant;
John T. Ward (Ober, Grimes and Shriver on brief)
for Appellee.

CRAVEN, Circuit Judge:

This is a suit brought by the representative of a deceased longshoreman, Marion Stephens, against a vessel owner

for personal injuries sustained in the course of loading coils of wire aboard the S.S. President Pierce.

The court found the facts to be as follows. Coils of steel wire were being loaded on board the vessel from a railroad gondola car. The coils were stowed in the gondola car in two rows of coils laid end to end in the floor of the car and then one row of coils above them. At the time of injury coils from the top row were being taken aboard the vessel. The coil of wire that caused Stephens to fall off the gondola car was not one being lifted at the time, but rather was one that moved slightly after coils which had been threaded began to be lifted, thus lessening the tension against it.

The district court's findings are supported by substantial evidence and are not clearly erroneous.

The district court concluded that the winch operator on board ship was not negligent, and that the vessel's gear and equipment were not defective. He characterized the only claim of the plaintiff worthy of consideration as one of "unseaworthiness" and as "a three-pronged claim, the first prong of which is a contention that the ship failed to supply a safe place to work; second, that the ship had accepted defective cargo; third, that there was an unsafe plan of operation, in the sense that . . . Marion Stephens should have been required by the vessel owner to move further away from the cargo being loaded at the time his injury occurred." He disposed of the so-called third prong by finding and concluding that "the court sees nothing unsafe with the plan of operation here." But there are no findings with respect to whether there was a failure to supply a safe place to work. The court noticed that there was no evidence of "any actual defect in the cargo that was being loaded *at the time*" (emphasis added), but failed to find whether or not the adjacent coil remaining on the gondola car was defective and had "sprung out and flipped [Stephens] right off the gondola car," as Stephens had testified by deposition. Thus unresolved is the question of why and how much the coil moved and whether it sprang out and flipped Stephens off the car.

In short, we cannot determine from the district court opinion whether the coil of wire that was said to have shifted and caused Stephens' fall was improperly banded, or not banded at all when it should have been, and whether its defective condition, if any, amounted to a failure of the ship to supply a safe place to work and constituted unseaworthiness.

The reason the district court did not reach and determine whether there was a failure to supply a safe place to work and unseaworthiness was that he concluded that the ship had not "accepted" the cargo—the coil remaining in the gondola car. He found that there had been no evidence "that the vessel actually accepted the coils which the Plaintiff says caused his injury, in the sense that the longshoreman had not yet touched that coil . . . or made any attempt to try to take it onboard the vessel." We are not unsympathetic with the district court's common-sense effort to draw a line and to put on one side of it a ship's responsibility for defective cargo and on the other side of the line exoneration from liability caused by cargo not yet "accepted." But such a rule, we think, would create more problems than it would resolve. What if the master of the vessel, perceiving difficulty below, shouts "I reject" imediately before the injury occurs? Whether or not the ship had "accepted" the coil that caused Stephens to fall from the gondola car, it is clear that it had begun the process of unloading the car, and at the time of injury the winch operator was actually lifting aboard other coils from the same car. We think that if the latent and allegedly defective condition of the adjacent coil—dormant, but compressed—was activated in the process of loading with the winch, a sufficiently close causal relationship would exist between the operation of the ship's gear and the injury, and we so hold. *See* Extension of Admiralty Jurisdiction Act, 46 U.S.C. §740 (970). *Cf. Gutierrez v. Waterman Steamship Co.*, 373 U.S. 206 (1963).

We reverse and remand for a new trial limited to the question of whether the ship failed to supply a safe place to work and whether the ship was rendered unseaworthy

by the allegedly defective condition of the coil of wire remaining in the gondola car.

REVERSED AND REMANDED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 74-1699

Raymond E. Pryor, Personal Representative of the Estate of Marion L. Stephens, Deceased,

Appellant,

versus

American President Lines,

Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore.

Herbert F. Murray, District Judge

Argued February 5, 1975 Reconsidered (prior opinion withdrawn): August 6, 1975

Decided March 17, 1975

Before HAYNSWORTH, Chief Judge, and CRAVEN and WIDENER, Circuit Judges.

Joseph F. Lentz, Jr., for Appellant;
John T. Ward (Ober, Grimes and Shriver on brief) for Appellee.

CRAVEN, Circuit Judge:

We heard this case on February 5, 1975, and released our slip opinion on March 17, 1975. We held that if defectively packaged goods in a railroad car on a pier are released by action of a ship's winch so as to cause injury, there exists a sufficiently close causal relationship between operation of the ship's gear and the injury to invoke the admiralty doctrine of unseaworthiness. On petition for rehearing by American President Lines, *we withdraw our prior opinion.* We are now convinced that the law or admiralty has no application to the facts of this case, and that the claim of unseaworthiness is therefore untenable. For reasons that will be more fully stated, the decision of the district court dismissing the complaint will be *affirmed.*

I.

On September 12, 1969, Marion L. Stephens, a longshoreman employed by the Nacirema Operating Company, was injured while helping load coils of steel wire from a railroad gondola car onto the S.S. PRESIDENT PIERCE at the Pennwood Wharf in Baltimore. The coils had been stowed in the gondola car in three rows, two on bottom and the third on top of those two in pyramid formation. Stephens' job was to run a wire through the center holes of several coils and hook the eyes at the ends of the wire to the ship's cargo cable so that the ship's winch could lift the coils on board. He allegedly was injured when a coil of wire that he had not yet touched, sprang open just as the coils next to it were being lifted away by the winch. It is claimed that the jagged end of the coil caught Stephens' trouser leg and knocked him off the gondola car.

Stephens sued the shipowner, American President Lines, alleging unseaworthiness and negligence. He invoked that admiralty jurisdiction of the district court, 28 U.S.C. § 1333(1); *see* Fed. R. Civ. P. 9(h), but also alleged diversity of citizenship, which the defendant specifically admitted. Since the ad damnum was $50,000 the district court had jurisdiction under 28 U.S.C. § 1332 as well.

The case proceeded on the admiralty side of the court and was tried to the judge without a jury. The only evidence on the circumstances of the injury was Stephens' pre-trial deposition, introduced because Stephens had since died from an unrelated accident. At the close of plaintiff's case the defendant shipowner moved for dismissal under Rule 41(b). The district court, in an oral opinion, determined that it had admiralty jurisdiction, but found that the facts showed neither negligence nor unseaworthiness and dismissed the case. It found no evidence whatsoever of negligence, and plaintiff has not pressed that theory on appeal. As to unseaworthiness, it found no indication of a defect in the ship's gear and nothing unsafe about the plan of operation, and failed to find anything wrong with the coils. Further, the court stated that even had there been shown "some defective condition of the cargo, such as improper banding of the coils, or nonexistent banding of the coils," the unseaworthiness claim would still fail for lack of proof that the ship had "accepted" and thus become responsible for the coil that injured Stephens.

II.

A federal maritime claim may be asserted in federal district court either under § 1333, or, in consequence of the "saving to suitors" clause of that section, based on diversity of citizenship.[1] Because defendant admitted

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[1] Section 1333 reads, in relevant part:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
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> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

The phrase "saving to suitors in all cases all other remedies" has been interpreted to mean that maritime law can be applied on the civil side of federal district court, *see* Victory Carriers, Inc. v. Law, 404 U.S. 202, 204 (1971); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 410-11 (1953), or even in state court, *see* Romero v. International Terminal Operating Co., 358 U.S. 354, 361-63 (1959). *See generally* G. Gilmore & C. Black, The Law of Admiralty 33-36, 374-85 (1957); H. Hart & H. Wechsler, The Federal Courts and the Federal System 906-07 (2d ed. 1973).

facts in the court below that showed diversity jurisdiction, we find it unnecessary to address the question of whether the court was correct in determining that it had jurisdiction under § 1333. For, as the Supreme Court noted in *Victory Carriers, Inc. v. Law,* 404 U.S. 202, 204 (1971), "under either section the claim that a ship or its gear was unseaworthy would be rooted in federal maritime law." The dispositive question, therefore, is not jurisdictional but whether maritime law applies to this claim.

The application of federal maritime law to alleged torts, whether negligence or unseaworthiness, has been governed historically by the locality of the harm. *Victory Carriers, supra,* at 205 and cases cited at n.2; *but cf. Executive Jet Aviation, Inc. v. City of Cleveland,* 409 U.S. 249 (1972) (suggesting that some relationship to traditional maritime activity must be shown in addition to "maritime locality"). Maritime law has been applied, in general, only to torts occurring on navigable waters, with the result in the case of injuries occurring on or about docked ships that "[t]he gangplank has served as a rough dividing line between the state and maritime regimes." *Victory Carriers, supra,* at 207.

The reach of federal maritime law depends upon the content of Art. III, § 2, cl. 1 of the Constitution, and must be defined by the courts as arbiters of that document. But the Supreme Court, deferring to the Congress, *see Executive Jet, supra,* at 272-74; *Victory Carriers, supra,* at 211-12, 216, has upheld congressional extensions so long as they do not transgress those ultimate "boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation." *Panama R.R. v. Johnson,* 264 U.S. 375, 386 (1924); *see also The Propeller Genesee Chief v. Fitzhugh,* 53 U.S. (12 How.) 443, 453-58 (1851).[2] Thus, although

[2] U. S. Const. Art. III, § 2:

> The judicial Power shall extend . . . to all Cases of admiralty and maritime Jurisdiction.

Although that clause appears on its face to be nothing more than a grant of jurisdiction empowering the federal courts to entertain ad-

the Court had earlier refused to permit recovery in admiralty for damage caused by a ship to persons or property on shore, *see Martin v. West*, 222 U.S. 191 (1911); *The Troy*, 208 U.S. 321 (1908); *The Plymouth*, 70 U.S. (3 Wall) 20 (1866), it allowed recovery for such an injury after Congress had passed the Admiralty Extension Act of 1948, 46 U.S.C. § 740, which states:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206 (1963), the Court held that a longshoreman on the dock could recover on a claim of unseaworthiness when he slipped on loose beans that had spilled from defective bags as they were being unloaded from a ship. *See Victory Carriers, supra*, at 210-11 (interpreting the holding of *Gutierrez* as dependent upon the Admiralty Extension Act); 7A J. Moore Federal Practice ¶ .325 (Supp. 1973), at 106. Thus, because Congress had acted within the "boundaries . . . which inhere in" the maritime law, *supra*, the maritime law extended in *Gutierrez* to the shoreward side of the gangplank.

In *Victory Carriers*, however, the Court refused to permit a maritime suit by a longshoreman injured during the loading process when the overhead protection rack of his

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miralty suits, it has been interpreted in addition both as empowering federal courts to draw on and develop the substantive admiralty law and as empowering Congress to revise and supplement that law within constitutional limits as defined by the Supreme Court. *See* Romero v. International Terminal Operating Co., 358 U.S. 354, 360-61 (1959). All three of these aspects of the Constitutional grant have been discussed by the courts, usually indiscriminately, under the rubric of "admiralty jurisdiction," Since the district court here had jurisdiction under § 1332 whether or not it did under § 1333, we deal in the opinion with only the latter two aspects—the substantive content and reach of admiralty law as delineated by the courts and by Congress. *Cf.* Mascuilli v. American Import Isbrandtsen Lines, Inc., 381 F. Supp. 770, 773 & n.5 (E.D. Pa. 1974).

forklift, owned by this stevedoring company, came loose and fell on him. The Court stated that "in the absence of congressional guidance," 404 U.S. at 204, maritime law would not be extended any farther beyond the gangplank than is authorized by the Admiralty Extension Act, and specifically that it would not cover any injury to a longshoreman simply because he was engaged in the process of loading a ship. *Id.* at 211, 214 and n.14.

After *Gutierrez* and *Victory Carriers* it is clear that maritime law does not reach an injury occurring off a ship that is being loaded or unloaded, *i.e.*, shoreward of the gangplank, unless the ship or some appurtenance of it[3] *causes* the accident within the meaning of the Admiralty Extension Act. Since the injury to Stephens in the instant case did not occur on the ship, the applicability of maritime law depends upon whether his injury was "caused" by the ship or its appurtenances.

Maritime law may conceivably be invoked upon either one of two theories: (a) the action of the ship's winch on the coil "caused" the injury, or (b) the defectively packaged coil had become ship's cargo so that its springing open was imputable to the ship, and in that sense the ship "caused" the injury.

What is the meaning of the word "caused" appearing in the Admiralty Extension Act? If "but for" causation is enough,[4] the action of the ship's winch in lifting neighboring coils to allow the coil that injured Stephens to spring open would invoke maritime law. If, on the other hand, the word means "proximate cause" the involvement of the winch does not support application of mari-

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[3] The text of the Admiralty Extension Act refers only to injuries caused by "a vessel." *See* text, *supra*, p. 7. The Supreme Court has interpreted the Act as extending the ship's liability for its crew and its "appurtenances" as well. Gutierrez v. Waterman Steamship Corp., 373 U.S. 206, 209-10 (1963); *see* Victory Carriers, Inc. v. Law, 404 U.S. 202, 210-11 (1971).

[4] Professors Harper and James use the phrase "cause in fact" to denote limitless causation—noting Eve's trespass caused all our woe. 2 F. Harper & F. James, The Law of Torts 1108 (1956).

time law, for the only permissible inference from the facts is that the proximate cause of the injury, assuming it was not simply an accident, was some defect in the banding of the springing coil not attributable to the ship; nothing indicated improper handling of the winch.

The Fifth Circuit has, we think, adopted a "proximate cause" construction in two cases. In *Kent v. Shell Oil Co.*, 286 F.2d 746 (5th Cir. 1961), the court held that maritime law did not apply when a truck driver was injured by oil field pipe that unexpectedly rolled off his truck bed onto him as he stood between his truck and the barge onto which the pipe was to be loaded. At the time of his injury the driver was trying to realign two displaced timber skids, along which the pipes were to be rolled from truck to barge. The court stated:

> There was . . . absolutely no evidence whatsoever *that anything done on the barge or in the handling of the skids caused the pipes to move or roll on* [the driver]. In a physical sense, this was due to the manner in which the pipe was loaded or left on the truckbed, was handled by the helper at the other end, or was not properly secured.
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> It might be argued that he would not have been in that position were it not for the skids being used. But the cause of the injury in no sense could be attributed to the vessel or its appurtenances, even if it is assumed that the skids were part of the barge's equipment. . . . This means that the "injuries" were non-maritime in nature. The extension of admiralty jurisdiction statute, 46 U.S.C.A. § 740, does not therefore make a classic non-maritime, land-based injury into something else.

286 F.2d at 749-50. And in *Adams v. Harris County*, 452 F.2d 994 (5th Cir.), *cert. denied*, 406 U.S. 968 (1972), the Fifth Circuit reversed a district court's finding that admiralty law extended to an injury suffered by a motorcyclist who ran into a draw-bridge barricade suddenly

lowered when the draw-bridge operator thought that an approaching pleasure craft had signaled to pass through. The district court had applied admiralty law because "there was a chain of events which began with the ship's approach to the bridge and subsequently moved landward to bring about plaintiff's injuries." 316 F. Supp. 938, 943 (S.D. Tex. 1970). The court of appeals disagreed:

> Did the vessel cause the injuries to the motorcyclist on the bridge? The vessel was simply approaching the bridge, as any vessel in those waters had a right to do. There is no showing that it was negligent in any respect. It is not charged with a tort of any kind. It had no control, could exercise none, and attempted to exercise none over the manner in which the bridge keeper performed his duties. . . . [T]he bridge keeper caused the bridge to begin to open, which, in turn, caused the barricade to drop, without any indication from the vessel that it was necessary to do so. The inescapable conclusion is that the dropping of the barricade was solely the act of the bridge keeper and no act of the vessel proximately caused his negligence, if there was any.
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> It inexorably follows that the injuries complained of were in no way caused by a vessel on navigable water. Jurisdiction is not saved by the Admiralty Extension Act.

452 F.2d at 996-97.

We agree with the Fifth Circuit, and so hold, that a ship or its appurtenances must proximately cause an injury on shore to invoke the Admiralty Extension Act and the application of maritime law. Both the congressional purpose behind the Act and considerations of federalism emphasized by the Supreme Court support this interpretation. Congress passed the Act "specifically to overrule or circumvent" a line of Supreme Court cases holding that maritime law did not extend to torts culminating in injury on land even when a ship on navigable waters was clearly the proximate cause. *See Victory Carriers, supra,* at 209 and n.8. There is no indica-

tion in the legislative history that Congress intended to go further and extend maritime law to land-based torts where a ship is not at fault, but supplies only a fortuitous but-for connection with an injury. *Cf. Di Paola v. International Terminal Operating Co.*, 294 F. Supp. 736, 740 (S.D.N.Y. 1968), *remanded on other grounds*, 418 F.2d 906 (2d Cir. 1969). The Supreme Court in *Gutierrez* neither suggested such a congressional intention nor indirated that such an extension would have been constitutionally permissible. The Court held only that maritime law applied when

> it is alleged that the shipowner *commits a tort* while or before the ship is being unloaded, . . . the impact of which is felt ashore at a time and place not remote from the *wrongful act*.

373 U.S. at 210 (emphasis added); *cf. Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 221-23 (1969).

Interpretation of the Act as requiring proximate cause also better accommodates federal and state interests than would but-for causation. In *Victory Carriers* the Supreme Court explained its reluctance to extend admiralty law farther than was supported by the Act:

> We are dealing here with the intersection of federal and state law. As the law now stands, state law has traditionally governed accidents like this one. To afford respondent a maritime cause of action would thus intrude on an area that has heretofore been reserved for state law, would raise difficult questions concerning the extent to which state law would be displaced or pre-empted, and would furnish opportunity for circumventing state workmen's compensation statutes. In these circumstances, we should proceed with caution in construing constitutional and statutory provisions dealing with the jurisdiction of the federal courts.

404 U.S. at 211-12. Although the Supreme Court was considering whether to go beyond the Act, while we are attempting to construe the Act itself, we believe the Court's admonition to "proceed with caution" applies

equally in this case. A "cause-in-fact" construction of the Act would open the way to displacement of state negligence law by federal admiralty law in many more situations than does the "proximate cause" construction,[5] and this would in turn open the district courts to many more claims by virtue of the federal admiralty jurisdiction, 28 U.S.C. § 1333.[6] As the Supreme Court noted, federal courts should "proceed with caution" in matters affecting their own jurisdiction as well as the reach of federal substantive law. *Cf. Healy v. Ratta*, 292 U.S. 263, 270 (1934). A "proximate cause" interpretation is an exercise of such caution.[7]

This leaves only the question of whether the coil said to have sprung open had become ship's cargo so that the ship was responsible for any defect in its banding. It is clear that an unseaworthiness claim exists against a ship under federal maritime law for improper stowage or defective packaging of cargo. *See Gutierrez, supra*, at 212-14; *Garrett v. Gutzeit*, 491 F.2d 228, 232 (4th Cir. 1974). But when do goods become "cargo"?

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[5] *See generally* 2 F. Harper & F. James, The Law of Torts, 1108-1110 (1956).

[6] A cause-in-fact interpretation would also, in circumstances like those here, make the applicability of federal maritime law turn on such a fortuity as whether the coils neighboring the allegedly defectively-banded one happend to be lifted by a ship's winch instead of a pier-based crane.

[7] For an example of the kind of involvement of a ship's equipment that would support application of maritime law under the Admiralty Extension Act, *see* Tucker v. Calmar Steamship Corp., 457 F.2d 440 (4th Cir. 1972), where this circuit in an opinion by the late Judge Sobeloff held that an unsafe method of loading had rendered a ship unseaworthy. As Judge Sobeloff stated, 457 F.2d at 442 n.1, "the proximate cause of [the] injuries was the unreasonable use of the ship's gear in loading operations, bringing the case within the rule of *Gutierrez* and the purview of section 740." *Compare also* Thompson v. Calmar Steamship Corp., 331 F.2d 657 (3d Cir.), *cert. denied*, 379 U.S. 913 (1964) (unseaworthiness due to unsafe method of loading found where ship's winch and engines used to "bump" railroad cars into position for unloading, with result that plaintiff was knocked from a car and run over); Kloster v. S. S. Chatam, 475 F.2d 43 (4th Cir. 1973) (allegation that ship's crew was negligent in allowing mooring lines to become slack during gondola-to-ship loading was sufficient to bring suit in admiralty). *See generally* Snydor v. Villain & Fassio, 459 F.2d 365 (4th Cir. 1972).

We agree with the cases applying maritime law to injuries caused by defective stowing or packaging of goods in place on the ship's deck, *e.g., Rich v. Ellerman and Bucknall S.S. Co.*, 278 F.2d 704, 707 (2d Cir. 1960); *Reddick v. McAllister Lighterage Line, Inc.*, 258 F.2d 297, 299 (2d Cir.), *cert. denied sub nom. McAllister Lighterage Line, Inc. v. John T. Clark & Son, Inc.*, 358 U.S. 908 (1958). Such cases simply apply the rule of unseaworthiness in its time-honored place, seaward of the gangplank.[8] Fault is not an essential element of the doctrine of "unseaworthiness"[9] but conceptually and theoretically it may rest upon an irrebuttable presumption of opportunity to prevent harm. Once goods are put aboard, the condition of containers and packaging are within the control of the master of the vessel, and in most instances, although not all, defective packaging is discernible by inspection. If most defects are ascertainable it is a rough sort of

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[8] Once goods are in place on a ship the Admiralty Extension Act would usually not be needed to support the application of admiralty law, since in the normal case any injury from the goods would occur on the ship and on navigable water, and thus be within the traditional maritime jurisdiction. The Act would come into play, however, if such goods did not cause injury while in place, but only later during their unloading and on the pier. *See, e.g.*, Gutierrez v. Waterman Steamship Corp., 373 U.S. 206 (1963); Garrett v. Gutzeit, 491 F.2d 228 (4th Cir. 1974). The only limitation in such a case would be that the injury occur "at a time and place not remote from the wrongful act." *Gutierrez, supra*, at 210; *see Garrett, supra*, at 232-33.

[9] The first authoritative statement which recognized the right to recover damages for injuries caused by unseaworthiness was made in *The Osceola*, 7 Fed. Cas. 755, No. 3,930 (D. Pa. 1789). G. Gilmore & C. Black, The Law of Admiralty 316 (1957). It was said in that case that both ship and shipowner are "liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship." The use of the word "failure" in the last clause connotes an idea of fault, but it is now clear, as the doctrine of unseaworthiness has developed, that it is a no-fault concept. *See generally* Gutierrez v. Waterman Steamship Corp., 373 U.S. 206, 213 (1963); G. Gilmore & C. Black, *supra*, at 315-32. *But cf.* Usner v. Luckenbach Overseas Corp., 400 U.S. 494 (1971) (no claim for unseaworthiness for injury caused by negligence of longshoreman who happened to be standing on ship's deck).

justice and not intolerable to assume that all are. Thus it is possible to say that the no-fault concept of unseaworthiness rests in part, at least theoretically, upon the ship's "fault" in failing to discern and correct conditions that may cause injury. Another reason, and perhaps a better one, for imputing responsibility for defective cargo to the ship is that once the ship is at sea the stress and strain of a voyage may break the packages, and it would thereafter be all but impossible to allocate responsibility as between the packager ashore and the ship's officers who subsequently undertake to move the cargo in a dangerous condition.

These factors do not come into focus when we concentrate upon goods in a railroad car on a pier—as yet untouched by the ship's gear. Not even theoretically may it be said there has been any opportunity to inspect; certainly not, as to a coil of wire held down by other heavy coils piled on it. When beans being unloaded from a ship spill on a dock, as in *Gutierrez,* who can say whether the spillage was caused by defective original packaging, movement at sea caused by the elements, or improper handling by the ship's crew? In such a situation the law throws up its hands and imputes liability to the last person in command of the situation. But if the beans are moving from the dock to the ship, as the coil of wire in this case, it is not possible even to surmise that defective packaging might have been caused by the ship's personnel.[10]

We are brought back again to the language of the Admiralty Extension Act that extends maritime law to injuries "caused by a vessel on navigable water." We assume the Congress, under Art. III, § 2 could have ex-

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[10] In *Gutierrez,* Mr. Justice Harlan said in dissent:

> Presumably the result reached by the Court would be the same—at least consistency demands that it should be the same—if this accident had occurred on the dock while the beans were being *loaded* rather than unloaded.

373 U.S. at 220 (emphasis in original). We think that he clearly meant that the Court's decision turned on the direction of the load—coming off the ship rather than being on-loaded.

tended maritime law shoreward by an enactment that the unseaworthiness doctrine should apply to all goods collected on a pier within a given distance from a ship for the purpose of being loaded aboard. *See* n.2 *supra.* Instead, the Congress chose the language "caused by a vessel." In so doing it embraced a fault idea that is applicable initially to invoke even a no-fault concept. Because it is not conceptually possible to charge the ship with having caused the defective packaging we think the no-fault doctrine of unseaworthiness is inapplicable on the facts of this case. For a ship to be responsible for injuries shoreward of the gangplank we think it must proximately cause injury to those ashore.

To hold otherwise is to embark upon endless line drawing until we get to a time and place "remote from the wrongful act." *See Gutierrez, supra,* at 210. But there has not even been a *wrongful act.* The ship's only act was using its winch in a proper manner without any opportunity to inspect and foresee that injury might occur if the top coil were lifted.

To go at the problem in terms of linear measurement from the ship, without respect to fault, invites caprice. Which factor is decisive: (1) physical contact with the railroad car, (2) piece-by-piece contact with packages in the car, (3) engagement of the ship's winch, (4) the beginning of the hoist or (5) somewhere in between, over the gangplank? Or do we go further from the ship: the next railroad car, perhaps, or all goods on the particular pier, or in the shipyard?

For all of the foregoing reasons, we hold that the no-fault doctrine of unseaworthiness with respect to packaging becomes operable seaward of the gangplank, *i.e.,* when goods first come to rest on shipboard,[11] and thereafter

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[11] In United States Lines Co. v. King, 363 F.2d 658 (4th Cir. 1966), this circuit upheld a jury verdict of unseaworthiness based, apparently, on a finding that defective metal bands used to bundle flitches were the proximate cause of a longshoreman's injury that occurred when some of the flitches fell from a forklift onto him during the process of loading the flitches onto a ship. Since it is clear from the opinion that the injury

continues to operate shoreward, in the offloading process, to a point not remote in time and place.[12]

To hold otherwise cannot be squared with the idea of causation expressed in the Admiralty Extension Act.[13] It would be absurd to exonerate the ship for its active conduct in operating its winch and then impute to it responsibility for defectively packaged goods it has not yet touched.

AFFIRMED.

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occurred on board the ship, maritime law was applicable under the traditional locality theory without any need for the Admiralty Extension Act. Thus the question was simply whether the defective bands could amount to defective cargo containers so as to render the ship unseaworthy. The court appears to have answered in the affirmative. 363 F.2d at 661. In part, however, *King* also rested on a theory that the bands were used as loading tackle, and therefore on Supreme Court cases that suggest a ship is responsible for the seaworthiness of any equipment on board. Alaska S.S. Co. v. Petterson, 347 U.S. 396 (1954); Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946); *see* G. Gilmore & C. Black, The Law of Admiralty 324-28 (1957). Our holding is consistent with *King*, since the flitches had once come to rest aboard ship before the injury. 363 F.2d at 660.

[12] Plaintiff urges that the district court erred in refusing to allow opinion testimony by an experienced longshoreman to the effect that improper banding probably caused the wire coil to spring open and knock Stephens off the gondola car. Since the court based its finding of no unseaworthiness partly on the absence of any evidence that the coils were improperly banded, this testimony was obviously very important. We need not decide whether exclusion of the testimony was reversible error because we have held that proof of defective banding would not support application of maritime law.

[13] Subjecting this ship to unseaworthiness liability, thus leaving the door ajar to even further extensions of maritime law and federal court jurisdiction, would also disregard the Supreme Court's admonition that we "proceed with caution" in this area. *See* text at page 14, *supra*.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 74-1952

Henry A. Sacilotto,

Appellant,

versus

National Shipping Corporation,
John T. Clark & Son of Maryland, Inc.,
John S. Connor, Inc.,
Bethlehem Steel Corporation,
United States Steel Corporation,

Appellees.

Appeal from the United States District Court
for the District of Maryland, at Baltimore.
R. Dorsey Watkins, District Judge.

Argued April 7, 1975 Decided August 6, 1975

Before CRAVEN and FIELD, Circuit Judges,
and CLARKE, District Judge.*

Joseph F. Lentz, Jr. for Appellant; Richard R. Jackson, Jr., Paul V. Niemeyer, (Piper and Marbury; Robert V. Barton, Jr.; Ober, Grimes, and Shriver; R. Roger Dreschsler; David R. Owen, Francis J. Gorman; Semmes, Bowen and Semmes; Donald C. Allen; J. Edward Martin; Theodore B. Oshrine; Allen, Theiblot and Alexander, on brief) for Appellee.

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* Sitting by designation.

CRAVEN, Circuit Judge:

Henry A. Sacilotto brought suit in district court seeking to invoke the admiralty jurisdiction, 28 U.S.C. § 1333, and the diversity jurisdiction, 28 U.S.C. § 1332, in order to raise claims for an injury incurred while Sacilotto was helping to load defendant's ship, the S.S. CHENAB. The district court dismissed the suit on its finding that it had neither diversity nor admiralty jurisdiction. Sacilotto has not challenged the ruling on the diversity point, and we agree with the district court that it had no admiralty jurisdiction. The dismissal is therefore affirmed.

The district court found the following facts bearing on the issue of jurisdiction:

> The essential facts of this case are undisputed. Plaintiff, a longshoreman, was engaged in the loading process as an employee of the stevedore (third party defendant), John T. Clark & Co. At the time of the occurrence in question, Plaintiff and his work gang were endeavoring to remove from an open top gondola car, which was sitting alongside the S.S. Chenab, twenty foot long steel billets measuring four inches by four inches in width. These billets had been placed in the gondola car by the shipper in two stacks, for balance, one over each set of wheels, and were stacked loosely or had been placed in the gondola car with wooden chocks to separate them while still red hot, *causing the chocks to burn out. In any event, they were 'dumped in there loose'* (Plaintiff's deposition at p. 12) at the time of the unloading of the gondola and loading of the ship.
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> Plaintiff's job on this particular day was to take a 'breaking out' wire and place it underneath eighteen billets at a time which were then lifted up slightly allowing Plaintiff to put a wooden chock under the bunch. The lifting was performed by the ship's boom. Normally, after the chock is put in, the billets are lifted higher and the wire is moved further along to prevent slippage and then a chock is placed under the other end of the batch by another longshoreman

> to allow chains to be placed around the group of billets for lifting onto the ship. When the billets were lifted after chocking, a loose billet, one not in the batch being lifted, *which had been bowed from the weight of the billets above it, sprang up and hit Plaintiff injuring him.* (Plaintiff's deposition at p. 26). According to Plaintiff, the actual cause of the accident was the failure to have chocks between the billets while in the gondola car and thus allowing such a bowing to occur from the weight of the billets scattered above it. (Plaintiff's deposition at pp. 32-35). He testified that such bowing *often occurs in unchocked loads but is unlikely to occur when chocks are properly placed between them.* (Plaintiff's deposition at p. 34). He further testified that the unloading was being done in the normal manner and that the ship's gear was working properly. (Plaintiff's deposition at pp. 25-26).

(emphasis in district court opinion).

The district court discussed the Supreme Court's decisions in *Gutierrez v. Waterman S.S. Corp.*, 373 U.S. 206 (1962) and *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971), which it considered controlling, and concluded that it lacked admiralty jurisdiction:

> [T]he steel billets had not as yet been rendered cargo and were therefore not an appurtenance of the ship so that this shorebased injury is not within the shoreward extension of admiralty jurisdiction occasioned by the Act as articulated by the *Gutierrez* case. . . . The defect of being improperly placed in the gondola car while alongside the ship awaiting loading onto the ship is not a breach of the stowage warranty (for indeed it was the shipper, not the ship, who stowed the billets in the gondola improperly) nor is it an injury caused by the ship or its appurtenances (since the clear cause of the injury was the manner in which the billets were stowed in the gondola).

In another opinion released today, *Pryor v. American President Lines,* No. 74-1699, we held that the substantive admiralty law did not apply to facts very similar to those here. That case controls this one. For the reasons developed at length in *Pryor,* an injury proximately caused by some defect in a shipment of goods (whether packaging, as alledged in *Pryor,* or stacking, as alleged here) that has not yet become ship's cargo, where the ship's gear or its operation is in no way culpable even though it is involved in a cause-in-fact sense, does not give rise to a claim in admiralty. It does not come within the traditional locality rule circumscribing admiralty's substantive jurisdiction, and the Admiralty Extension Act does not bring it within that jurisdiction.

In *Pryor* the district court had jurisdiction based on diversity of citizenship. Our holding was that the court could not apply the principles of admiralty law, including the doctrine of unseaworthiness. In this case, the fact that substantive admiralty law does not apply means that the court below lacked jurisdiction. Diversity was absent, and § 1333 by its terms gives jurisdiction only to claims arising in admiralty. *See generally Pryor, supra,* at n.1 and 2. Sacilotto is therefore relegated to state courts and state law.

AFFIRMED.